

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA

Plaintiff

v.

MANUEL RIVERA TORRES

Defendant

CIVIL NO. 06-1178 (JAF)

REPORT AND RECOMMENDATION

The petitioner's Section 2255 motion (Docket No. 1) must be dismissed without prejudice since he is currently pursuing a direct appeal of his sentence of conviction (Docket No. 30 - notice of appeal in criminal case 04-374 (JAF)). See Oakes v. United States, 400 F. 3d 92, 95 (1st Cir. 2005) (2255 motion cannot be considered while direct appeal is pending); United States v. Gordon, 634 F. 2d 638, 638 (1st Cir. 1980).

Under the provisions of 28 U.S.C. § 636 and Local Rule 72(d), District of Puerto Rico, any party who objects to this report and recommendation must file a written objection thereto with the Clerk of the Court within ten (10) days of the party's receipt of this report and recommendation. The written objections must specifically identify the portion of the recommendation, or report to which objection is made and the basis for such objections. Failure to comply with this rule precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111(1986); Davet v. Maccorone, 973 F.2d 22, 30-31 (1st Cir. 1992).

SO RECOMMENDED.

Date: March 6, 2006

S/J Gustavo A. Gelpi
GUSTAVO A. GELPI
United States Magistrate Judge